

Judith B. Jennison, Bar. No. 165929  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
Telephone: 206.359.8000  
Facsimile: 206.359.9000  
Email: JJennison@perkinscoie.com

Julie E. Schwartz, Bar No. 260624  
Lauren B. Cohen, Bar No. 285018  
PERKINS COIE LLP  
3150 Porter Drive  
Palo Alto, California 94304-1212  
Telephone: 650.838.4300  
Facsimile: 650.838.4350  
Email: JSchwartz@perkinscoie.com  
Email: LCohen@perkinscoie.com

Attorneys for Plaintiffs

TIMOTHY FERRISS and KRISA  
PERFORMANCE, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY FERRISS, an individual; and  
KRISA PERFORMANCE, LLC, a  
California limited liability company,

Plaintiffs,

v.

ALLIANCE PUBLISHING, INC., a  
Florida corporation; WEALTH  
PARTNERS PUBLISHING, an Illinois  
corporation; CANDICE CUNNINGHAM,  
an individual; and PEAGAN TWITTY, an  
individual

Defendants.

Case No. 3:15-cv-5675

**COMPLAINT FOR:**

**(1) RIGHT OF PUBLICITY (CAL. CIV.  
CODE § 3344);  
(2) FALSE DESIGNATION OF ORIGIN (15  
U.S.C. § 1125(a));  
(3) TRADEMARK INFRINGEMENT (15  
U.S.C. § 1114); AND  
(4) CALIFORNIA STATUTORY UNFAIR  
COMPETITION (CAL. BUS. & PROF. CODE §  
17200)**

**DEMAND FOR JURY TRIAL**

1 For its Complaint, Plaintiffs Timothy Ferriss and Krisa Performance, LLC (“Krisa  
2 Performance”) (collectively, “Plaintiffs”) allege as follows:

3 **PARTIES**

4 1. Plaintiff Timothy Ferriss is an individual residing in San Francisco, California.

5 2. Plaintiff Krisa Performance is a California limited liability company located at 60  
6 29th Street, #105, San Francisco, California 94110.

7 3. On information and belief, Defendant Alliance Publishing, Inc. (“Alliance”) is a  
8 Florida corporation located at 3011 West 183rd Street #342, Homewood, IL 60430.

9 4. On information and belief, Defendant Wealth Partners Publishing (“Wealth  
10 Partners”) is an Illinois corporation located at 1136 S Delano Ct West Suite B201 Chicago, IL  
11 60605.

12 5. On information and belief, Defendant Candice Cunningham is an individual  
13 residing at 7207 S Richmond Street, Chicago, Illinois 60629.

14 6. On information and belief, Defendant Peagan Twitty is an individual residing at  
15 7530 Grouse Pl., Hyattsville MD 20785.

16 **JURISDICTION AND VENUE**

17 7. This Court has subject matter jurisdiction over the claims asserted herein pursuant  
18 to 28 U.S.C. §§ 1331 (federal question), 1338(a) (trademark), 1338(b) (related unfair  
19 competition) and 1367 (supplemental jurisdiction).

20 8. This Court has diversity jurisdiction over the claims herein pursuant to 28 U.S.C. §  
21 1332 because there is diversity of citizenship between the parties and the matter in controversy  
22 exceeds the sum or value of \$75,000, exclusive of interest and costs.

23 9. This Court has personal jurisdiction over Defendants, as the tortious conduct  
24 alleged in this Complaint took place in this District, and Defendants knew or reasonably should  
25 have known that their conduct alleged in this Complaint would cause injury to Plaintiffs in this  
26 District.

10. Venue is proper under 28 U.S.C. § 1391 in that the claims arose in this District, Plaintiffs are suffering harm in this District, and Defendants are subject to personal jurisdiction in this District.

**INTRADISTRICT ASSIGNMENT**

11. This is an Intellectual Property Action to be assigned on a district-wide basis under Civil Local Rule 3-2(c).

**TIMOTHY FERRISS**

12. Plaintiff Timothy Ferriss is an American author, public speaker, angel investor, and entrepreneur. He has been listed as one of Fast Company's "Most Innovative Business People," Forbes Magazine's "Names You Need to Know," and was the seventh "most powerful" personality on Newsweek's Digital 100 Power Index for 2012.

13. Mr. Ferriss wrote the following books, which were #1 New York Times bestsellers (among other distinctions): (1) the 4-Hour Workweek (sold in over 35 languages), (2) the 4-Hour Body, and (3) the 4-Hour Chef.

14. Mr. Ferriss also writes a blog found at <http://fourhourworkweek.com/>, which is one of Inc. Magazine's "19 Blogs You Should Bookmark Right Now," and it has been ranked #1 on the Top 150 Management and Leadership Blogs list, based on Google PageRank, Alexa traffic ranking, Bing results, Technorati authority, Feedburner subscribers, and PostRank. In addition, Mr. Ferriss' Twitter account was selected by Mashable as one of the "5 Must-Follow Twitter Accounts for Entrepreneurs," a list including Richard Branson, Mark Cuban, Marissa Mayer, and Jack Dorsey.

15. Mr. Ferriss also has a podcast called "The Tim Ferriss Show." The podcast has been ranked the number one podcast on all of iTunes, as well as the number one business podcast on all of iTunes. It was also selected to iTunes' "Best of 2014." The podcast has exceeded tens of millions of downloads and its guests have included politicians, music producers, Hollywood directors, motivational speakers, meditation experts, Silicon Valley entrepreneurs, theoretical physicists, brain researchers and New York Times bestselling authors.

16. Mr. Ferriss has been featured by more than 100 media outlets, including The New York Times, The Economist, Late Night with Jimmy Fallon, TIME, Forbes, Fortune, CNN, and CBS, and has been a popular guest lecturer at Princeton University since 2003, where he presents entrepreneurship as a tool for world change and ideal lifestyle design.

17. In addition, Mr. Ferriss has been invited to speak at some of the world's most innovative organizations, including MIT, Harvard Business School, Princeton University, the Wharton School, the Stanford Graduate School of Business, The Central Intelligence Agency (CIA), Microsoft, Google, Nike, PayPal, Facebook, Ask.com and Nielsen. He has also been invited to speak and keynote at world-renowned technology summits including EG, FOO Camp, E-Tech, Supernova, LeWeb, and the Web 2.0 Exposition, where he shared the stage with figures like Eric Schmidt, Chairman of the Board of Google, and Jeff Bezos, founder and CEO of Amazon.

## KRISA PERFORMANCE

18. Krisa Performance is a limited liability company organized on behalf of Mr. Ferriss that owns Mr. Ferriss' federal trademark registrations.

## The TIM FERRISS Mark

19. Plaintiff Krisa Performance is the owner of two federal trademark registrations with the U.S. Patent and Trademark Office (“USPTO”) for TIM FERRISS, Registration Nos. 3,977,565 and 4,462,764. Copies of the registrations for the TIM FERRISS marks are attached hereto as Exhibit A.

20. Since April 6, 2007, Krisa Performance has used the TIM FERRISS mark in connection with blogs about nutrition and weight loss, as well as strategies for achieving success in business and balance in personal life.

21. Since December 31, 2008, Krisa Performance has used the TIM FERRISS mark in connection with programming about optimizing one's life, physical and mental health, and programming regarding wellness, fitness, cooking and recipes.

## The TIMOTHY FERRISS Mark

1           22.     Krisa Performance is the owner of two federal trademark registrations with the  
2     USPTO for TIMOTHY FERRISS, Registration Nos. 3,977,567 and 4,536,123. Copies of the  
3     registrations for the TIMOTHY FERRISS marks are attached hereto as Exhibit B.

4           23.     Since at least as early as April 24, 2007, Krisa Performance has used the  
5     TIMOTHY FERRISS marks in connection with books and online blogs discussing strategies for  
6     achieving success in business and balance in personal life, as well as nutrition, weight loss,  
7     health, fitness and diet.

8           24.     Since December 31, 2008, Krisa Performance has used the TIMOTHY FERRISS  
9     mark in connection with programs aimed at the optimization of life and physical and mental  
10    health, including programs discussing wellness, fitness, cooking and recipes.

11                               THE 4-HOUR WORKWEEK Mark

12           25.     Krisa Performance is the owner of USPTO Registration Nos. 3,492,243 and  
13    3,861,282 for the THE 4-HOUR WORKWEEK service mark and trademark. Copies of the  
14    registrations for the THE 4-HOUR WORKWEEK marks are attached hereto as Exhibit C.

15           26.     Krisa Performance began using THE 4-HOUR WORKWEEK in commerce on  
16    March 12, 2007, in connection with lectures and conference programs on the subject of achieving  
17    success in business and balance in personal life.

18           27.     Since April 24, 2007, Krisa Performance has been using THE 4-HOUR  
19    WORKWEEK in connection with books and online blogs concerning success in business and  
20    balance in personal life.

21                               DEFENDANTS' UNLAWFUL ACTIVITY

22           28.     Defendants are engaged in direct marketing "get rich quick" scams entitled: "How  
23    To Earn Up To \$1,000, Every Single Day, With My Fail-Proof, Money-Back, 100% Lifetime  
24    Guaranteed System! My First Year Earned Me Over \$350,000... You Can Do The Same, And  
25    I'll Show You How! It's As Easy As 1-2-3!" Defendants are falsely and fraudulently claiming  
26    that Mr. Ferriss endorses these scams by using his name, picture and a fake quote on their  
27    marketing materials, which are distributed through the mail and on the Internet:  
28

"I simply can't recommend this highly enough. The results are outstanding for those who simply take action. It is undoubtedly the most fail-proof and easiest daily income generator I've ever seen."

Tim Ferriss, New York Times Best-Selling Author of The 4-Hour Workweek, [www.4hourworkweek.com](http://www.4hourworkweek.com)



29. Mr. Ferriss does not endorse Defendants' scheme and did not make the statement attributed to him, or authorize the use of his name or photograph in connection with the scheme.

30. There are two versions of the flyer. The first flyer, attached as Exhibit D, has been distributed by Defendants Alliance and Twitty by mail and on the Internet for over a year.

Alliance is a corporation registered with the Florida Department of State. Defendant Peagan Twitty registered Alliance with the State of Florida. On information and belief, Ms. Twitty is the alter ego of Alliance and is responsible for creating and distributing the Alliance flyer.

31. On July 9, 2014, Plaintiffs demanded that Alliance and Peagan Twitty cease their infringing use of the Plaintiffs' marks, as well as the unauthorized use of Tim Ferriss' right of publicity. A copy of this demand is attached hereto as Exhibit E.

32. The second version of the flyer, attached as Exhibit F, has been circulated by Defendants Wealth Partners and Cunningham on the Internet at <http://wealth-partners.org/partnerprofit.html> since at least October 2015. Wealth Partners is a corporation registered with the Illinois Department of State. Defendant Candice Cunningham is the registrant of the <http://wealth-partners.org> domain name from which the fraudulent Wealth Partners flyer is distributed. On information and belief, Ms. Cunningham is the alter ego of Wealth Partners and is responsible for creating and distributing the Wealth Partners flyer.

33. On information and belief, there is a connection between Alliance and Wealth Partners because the two companies use the identical flyer and false quote from Mr. Ferriss. In addition, Ms. Cunningham has registered a Florida Corporation called "Alliance Publishing Books, Inc.," a name virtually identical to Ms. Twitty's Florida Corporation "Alliance Publishing Inc.," suggesting some relationship between the two. Twitty, Cunningham, Alliance and Wealth Partners may have acted in concert and if so are all jointly and severally liable for each other's activities.

1           34. Defendants' fraudulent use of Mr. Ferriss' name, likeness and fake quote as well  
2 as their fraudulent use of the TIM FERRISS, TIMOTHY FERRISS, and THE 4-HOUR  
3 WORKWEEK marks is likely to cause and has caused consumer confusion.

4           35. Defendants' fraudulent use of Mr. Ferriss' name, likeness and fake quote as well  
5 as their fraudulent use of the TIM FERRISS, TIMOTHY FERRISS, and THE 4-HOUR  
6 WORKWEEK marks is likely to continue to cause confusion, mistake, or deception as to the  
7 source of Defendants' products and/or services.

8           36. Furthermore, Defendants' fraudulent use of Mr. Ferriss' name, likeness and fake  
9 quote as well as their fraudulent use of the TIM FERRISS, TIMOTHY FERRISS, and THE 4-  
10 HOUR WORKWEEK marks creates mistaken impressions as to the affiliation, connection, or  
11 association of Defendants with Plaintiffs and/or that the Defendants' products and/or services are  
12 sponsored by, affiliated with, or in some way connected with Plaintiffs.

13           37. Plaintiffs' remedies at law are not adequate to compensate Plaintiffs for the injury  
14 caused by the Defendants' continued fraudulent use of Mr. Ferriss' name, likeness and fake quote  
15 as well as their fraudulent use of the TIM FERRISS, TIMOTHY FERRISS and THE 4-HOUR  
16 WORKWEEK marks, as Plaintiffs are entitled to control the use of the TIM FERRISS,  
17 TIMOTHY FERRISS and THE 4-HOUR WORKWEEK marks to prevent the likelihood that  
18 consumers may be confused, mistaken or deceived into believing that the products and/or services  
19 offered in association with that mark originate from Plaintiffs, or are endorsed by, sponsored by,  
20 affiliated with, or in some way connected to Plaintiffs when they are, in fact, not.

21           38. Defendants know they are not authorized to use Mr. Ferriss' name, likeness or fake  
22 quote or the TIM FERRISS, TIMOTHY FERRISS, and THE 4-HOUR WORKWEEK marks.  
23 Defendants know or should know that their actions violate the plaintiffs' exclusive rights in the  
24 trademarks and in Mr. Ferriss' right of publicity. Accordingly, Defendants' violation of  
25 Plaintiffs' rights is willful.  
26  
27  
28

**CLAIMS FOR RELIEF**

**COUNT 1 – VIOLATION OF RIGHT OF PUBLICITY ( *CAL. CIV. CODE § 3344* )**

**(BY TIMOTHY FERRISS AGAINST ALL DEFENDANTS)**

39. Plaintiffs allege and incorporate by reference the allegations in the paragraphs above.

40. Mr. Ferriss' name and likeness is distinctive and famous and his professional persona is well known as an innovative American author, public speaker, angel investor, and entrepreneur.

41. Defendants have knowingly used Mr. Ferriss' photograph, identity, name, likeness and persona without Mr. Ferriss' consent to promote Defendants' direct marketing scams and create the illusion that Mr. Ferriss endorses them.

42. Defendants' conduct violates Mr. Ferriss' common law right of publicity and California Civil Code § 3344.

43. Defendants' conduct is willful.

44. Mr. Ferriss has suffered damage to goodwill associated with his name, likeness, and persona as a result of defendants misappropriation of his right of publicity, in excess of \$200,000, to be proven at trial.

45. Defendants' ongoing violation of Mr. Ferriss' right of publicity, has caused injury and will continue to cause injury to Mr. Ferriss, including injury to his reputation and goodwill, in an amount exceeding \$200,000 to be proven at trial.

46. Mr. Ferriss will continue to be damaged by Defendants' acts in a manner that cannot be fully measured or compensated in economic terms. Mr. Ferriss has no adequate remedy at law and is entitled to permanent injunctive relief.

**COUNT 2 – FALSE DESIGNATION OF ORIGIN ( *15 U.S.C. § 1125(a)* )**

**(BY TIMOTHY FERRISS AGAINST ALL DEFENDANTS)**

47. Plaintiffs allege and incorporate by reference the allegations in the paragraphs above.



1           48. Defendants' false claim that Mr. Ferriss endorses their fraudulent and unlawful  
2 "get rich quick" scheme constitutes the use in interstate commerce of a false designation of  
3 origin, false or misleading description of fact, or false or misleading representations of fact that  
4 are likely to cause confusion or mistake, or to deceive as to the affiliation, connection, or  
5 association of Defendants' products and/or services with Mr. Ferriss, or as to the origin,  
6 sponsorship, or approval of products and/or services offered by Defendants in violation of 15  
7 U.S.C. § 1125(a).

8           49. Defendants' actions have caused and will continue to cause damage to Mr. Ferriss'  
9 goodwill and reputation in an amount exceeding \$200,000 to be proven at trial.

10          50. Defendants know (and at all relevant times have known) that Mr. Ferriss does not  
11 endorse their product. Defendants also know (and at all relevant times have known) that they are  
12 not authorized to use his name in connection with their "get rich quick" scheme or any other  
13 products or services. Defendants' false designation of origin has been knowing, willful and  
14 deliberate, and the Court should award Mr. Ferriss his attorneys' fees pursuant to 15 U.S.C. §  
15 1117.

16          51. Defendants' acts have damaged, and threaten to continue damaging, Mr. Ferriss'  
17 reputation and goodwill. Mr. Ferriss has been, and continues to be, damaged by such acts in a  
18 manner that cannot be fully measured or compensated in economic terms. Mr. Ferriss therefore  
19 has no adequate remedy at law and seeks permanent injunctive relief pursuant to 15 U.S.C. §  
20 1116.

21                   **COUNT 3 – TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)**

22                   **(BY KRISA PERFORMANCE AGAINST ALL DEFENDANTS)**

23          52. Plaintiffs allege and incorporate by reference the allegations in the paragraphs  
24 above.

25          53. Defendants' activities constitute infringement of Krisa Performance's federally  
26 registered TIM FERRISS, TIMOTHY FERRISS and THE 4-HOUR WORKWEEK service  
27 marks and trademarks in violation of 15 U.S.C. § 1114(1).  
28

54. Because of Krisa Performance's long, continuous, and exclusive use of the TIM FERRISS, TIMOTHY FERRISS and THE 4-HOUR WORKWEEK marks, they have come to mean, and are understood by consumers to signify products and/or services of Krisa Performance.

55. Defendants' use of Krisa Performance's TIM FERRISS, TIMOTHY FERRISS and THE 4-HOUR WORKWEEK marks in connection with the distribution of flyers and Defendants' products and/or services is likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

56. Further, Defendants' activities are likely to lead consumers to conclude, incorrectly, that the infringing products and/or services that these Defendants are advertising, marketing, distributing and/or selling originate with or are authorized or approved by Krisa Performance, to the damage and harm of Krisa Performance.

57. Defendants' actions have caused and will continue to cause damage to Krisa Performance, including to its reputation and goodwill, in an amount exceeding \$200,000 to be proven at trial.

58. Defendants knew or should have known that they had no right to use Krisa Performance's trademarks. Defendants' infringement has been knowing, willful and deliberate, such that the Court should award Krisa Performance its attorneys' fees and treble its damages pursuant to 15 U.S.C. § 1117.

59. Defendants' acts have damaged, and threaten to continue damaging, Krisa Performance's reputation and goodwill. Krisa Performance has been, and continues to be, damaged by such acts in a manner that cannot be fully measured or compensated in economic terms. Krisa Performance therefore has no adequate remedy at law and seeks permanent injunctive relief pursuant to 15 U.S.C. § 1116.

**COUNT 4 – UNFAIR COMPETITION (CAL. BUS. & PROF. CODE §§ 17200, et seq.)**

**(BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

60. Plaintiffs allege and incorporate by reference the allegations in the paragraphs above.

61. Defendants have engaged in unlawful, unfair or fraudulent business practices or acts as described above that have injured and will continue to injure Plaintiffs in their business and property, in violation of California Business and Professions Code §§ 17200, *et seq.*

62. Defendants are liable to Plaintiffs for restitution and disgorgement of Defendants' profits from their unlawful, unfair or fraudulent business practices.

63. The foregoing acts have damaged and irreparably harmed Plaintiffs and will continue to do so if not enjoined.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for relief as follows:

A. That Judgment be entered in Plaintiffs' favor against Defendants on all claims;

B. That Defendants, their agents, servants, officers, employees and all persons in active concert or participation with them be permanently enjoined from (a) misusing Mr. Ferriss' photograph, persona, and name; (b) misleading the public into believing that Mr. Ferriss endorses any product or service offered by Defendants; (c) using in any matter whatsoever Plaintiffs' TIM FERRISS, TIMOTHY FERRISS and THE 4-HOUR WORKWEEK marks, or any confusingly similar mark, logo, trade name, domain name or other source identifier, in connection with Defendants' products and/or services; (d) violating, inducing or enabling others to violate Plaintiffs' rights of publicity, service mark and trademark rights in any manner whatsoever; and (e) unfairly competing with Plaintiffs in any manner whatsoever;

C. That Plaintiffs be awarded monetary damages, restitution and disgorgement to compensate for their injuries in an amount to be proven at trial;

D. That monetary damages be trebled as a result of Defendants' willful violation of plaintiffs' rights;

E. That Plaintiffs be awarded pre-judgment and post-judgment interest on all damages awarded against the Defendants;

F. That Plaintiffs be awarded their costs, expenses, and reasonable attorneys' fees;

G. Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demands a trial by jury of all issues so triable.

DATED: December 11, 2015

**PERKINS COIE LLP**

By: /s/ Judith B. Jennison  
Judith B. Jennison

Attorneys for Plaintiffs TIMOTHY  
FERRISS and KRISA PERFORMANCE,  
LLC